United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1906.

No. 1681.

SIMON D. BRONSON, APPELLANT,

vs.

EDMUND BRADY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 16, 1906.

In the Court of Appeals of the District of Columbia.

No. 1681.

SIMON D. BRONSON, Appellant,
vs.
EDMUND BRADY.

a Supreme Court of the District of Columbia.

At Law. No. 48301.

EDMUND BRADY, Plaintiff,
vs.
SIMON D. BRONSON, Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed, and proceedings had, in the above-entitled cause, to-wit:

1 *Declaration, etc.*

Filed February 2, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48301.

EDMUND BRADY, Plaintiff,
vs.
SIMON D. BRONSON, Defendant.

1. The plaintiff, Edmund Brady, sues the defendant, Simon D. Bronson, for that heretofore, to wit, on the 28th day of July, A. D. 1905, the said defendant, by the designation of S. D. Bronson, by his promissory note, now overdue, promised to pay to Winifred Bronson, by the designation of Mrs. Winifred Bronson, the sum of three thousand dollars ($3,000.00) six months after date with interest at the rate of four per centum per annum until paid; that said note was thereafter duly endorsed and assigned to the plaintiff, who is now the owner and holder thereof; that at its maturity said note was

presented for payment but payment was refused, and said note remains and is now wholly due and unpaid.

Wherefore the plaintiff brings suit and claims the sum of three thousand dollars ($3,000.00) with interest thereon from the 28th day of July, A. D. 1905, at the rate of four per centum per annum, until paid, besides costs.

2. The plaintiff, Edmund Brady, sues the defendant,
2 Simon D. Bronson, for money payable by the defendant to the plaintiff, for goods sold and delivered by the plaintiff to the defendant; and for work done and materials provided by the plaintiff for the defendant at his request; and for money lent by the plaintiff to the defendant; and for money paid by the plaintiff for the defendant at his request; and for money received by the defendant for the use of the plaintiff; and for money found to be due from the defendant to the plaintiff on account stated between them.

And the plaintiff claims the sum of three thousand dollars ($3,000.00) with interest thereon from the 28th day of July, A. D. 1905, according to the Particulars of Demand hereto annexed.

HAMILTON & COLBERT,
Attorneys for Plaintiff.

Notice to Plead.

The defendant is to plead hereto on or before the twentieth day exclusive of Sundays and legal holidays occurring after the day of service hereof; otherwise judgment.

HAMILTON & COLBERT,
Attorneys for Plaintiff.

3 *Particulars of Demand.*

WASHINGTON, D. C., *July 28th,* 1905.

Six Months After Date I wil- Pay Mrs. Win-fred Bronson 3000*0*.00 Three Thousand Dollars With 4 Per Cent. *E*nt-rest until Paid.

S. D. BRONSON.

For value received I hereby transfer, set over and assign unto Edmund Brady all my right, title and interest in and to the above note for Three Thousand Dollars, dated July 28, 1905, signed by S. D. Bronson and made payable to me six months after date with interest at four per cent. per annum until paid.

WINIFRED BRONSON.

NOTE.—Endorsed Mrs. Winifred Bronson.

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me, a Notary Public, in and for the District of Columbia, Edmund Brady, who being duly sworn deposes and says that he is the person named as plaintiff in the foregoing

and annexed declaration which is hereby referred to and made a part of this affidavit, and that Simon D. Bronson is the defendant; that he has a good cause of action against said defendant which said cause of action is as follows: on, to wit, the 28th day of July, A. D. 1905,
4 the said defendant by his promissory note now overdue promised to pay Winifred Bronson, by the designation of Mrs. Win-fred Bronson, the sum of Three thousand Dollars ($3,000.00) in six months after date, with interest thereon at the rate of four per centum per annum until paid; that thereafter said note was duly endorsed and assigned by said Winifred Bronson to the plaintiff, who is now the owner and holder thereof, as will appear from the Bill of Particulars attached to said declaration, and made a part hereof; that said note was transferred to plaintiff in due course of business, and is now overdue and remains wholly due and unpaid. Affiant further avers on information and belief that the signature of S. D. Bronson to said note is the genuine signature of said defendant, and that said note is the genuine note of the said defendant, and affiant says that he is justly entitled to recover from the said Simon D. Bronson the full sum of Three Thousand Dollars ($3,000.00) with interest thereon until paid at the rate of four per cent. per annum from the 28th day of July, A. D. 1905, exclusive of all set-offs and just grounds of defense.

EDMUND BRADY.

Subscribed and sworn to before me this 1st day of February, A. D. 1906.

LOUISE F. DYER,
[NOTARIAL SEAL.] *Notary Public, D. C.*

5 *Pleas of Defendant and Affidavit.*

Filed March 1, 1906.

In the Supreme Court of the District of Columbia.

48301. At Law.

EDMUND BRADY
vs.
SIMON D. BRONSON.

The defendant for pleas to the declaration herein filed says:
1. That he never promised as alleged.
2. That he is not indebted as alleged.

ALEXANDER H. BELL,
E. H. THOMAS,
Defendant's Attorneys.

DISTRICT OF COLUMBIA, *ss:*

I, Simon D. Bronson, on oath depose and say that I am the defendant in the above entitled cause; that I have heard read the pleas annexed hereto and same are made part hereof; that I deny that the plaintiff in said action has any right or cause of action against me whether upon the note mentioned in these proceedings, the common counts set out in his declaration or upon any other matter whatsoever; that the Winifred Bronson or Mrs. Winifred Bronson mentioned in the note, declaration and affidavit filed herein, was
6 at the time of the making of said note, the institution of these proceedings and still is the wife of this affiant and the marriage of said Winifred Bronson and this affiant has never in any manner by divorce or otherwise, been dissolved, ended or terminated and said facts were all known to the plaintiff in this proceeding prior to the date of the alleged endorsement and assignment of said note to him; that the note alleged in these proceedings to have been made, executed and delivered by this affiant to the said Winifred Bronson and further alleged to have been endorsed, assigned and delivered by her to the plaintiff herein is null and void and said plaintiff has no right of action thereon in this proceeding against this affiant; that this affiant has been informed and believes and upon such information and belief alleges and expects to show it is the fact that said note is not held or owned by said plaintiff but that it is the property of the said Winifred Bronson, the wife, as aforesaid, of this affiant, and that said note was not transferred to said plaintiff in the due course of business but was transferred by the said Winifred Bronson to said plaintiff in an endeavor to prevent and defeat this affiant from availing himself of the defenses he would by law be entitled to raise and make had his said wife, the said Winifred Bronson, instituted proceedings at law in her own name upon said note and that said plaintiff did not take, acquire or receive said note from the said Winifred Bronson before the maturity thereof or without notice or for value and that said plaintiff is connected and associated with the firm of Messrs. Hamilton & Colbert, the
7 attorneys who instituted this proceeding and which firm had said note in its charge for collection as attorneys for the said Winifred Bronson, wife of this affiant, prior to the alleged transfer, endorsement, assignment and delivery thereof to said plaintiff and which firm had knowledge of the fact that said Winifred Bronson was the wife of this affiant and that said firm prior to the maturity of said note advised this affiant in substance and effect that it had said note as attorneys for the said Winifred Bronson for collection and that said note could be paid at his office and that this affiant expects to also show and also upon information and belief alleges it is the fact that said plaintiff instituted these proceedings as the agent or trustee of the said Winifred Bronson, wife as aforesaid, of this affiant, and that except to that extent he has no interest in or ownership of said note and affiant further says that said plaintiff has no cause of action against this affiant in this proceeding and that this affiant is not now and never was indebted to said plaintiff in the amount claimed in his declaration, affidavit or particulars of demand,

filed in these proceedings, nor is this affiant indebted to the said plaintiff in any other sum whatsoever.

SIMON D. BRONSON.

Subscribed and sworn to before me this First day of March, A. D., 1906.

DAVID N. HOUSTON,
Notary Public, D. C.

[NOTARIAL SEAL.]

8 *Motion for Judgment Under 73d Rule.*

Filed March 2, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 48301.

EDMUND BRADY
vs.
SIMON D. BRONSON.

Now comes the plaintiff, by his attorneys, and moves the court for judgment under the 73d rule of the Court for want of a sufficient affidavit of defense.

HAMILTON & COLBERT,
Attorneys for Plaintiff.

Messrs. Alexander H. Bell and E. H. Thomas, Attorneys for Defendant:

Please take notice that the above motion will be called to the attention of the Justice holding Circuit Court No. 1, on Friday, March 9th, 1906, at 10 o'clock, A. M., or as soon thereafter as counsel can be heard.

HAMILTON & COLBERT,
Attorneys for Plaintiff.

9 Supreme Court of the District of Columbia.

MONDAY, *April 2nd,* 1906.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice presiding.

* * * * * * *

No. 48301. At Law.

EDMUND BRADY, Plaintiff,
vs.
SIMON D. BRONSON, Def't.

Upon consideration of plaintiff's motion filed herein, for judgment for want of a sufficient affidavit of defense, it is ordered that said motion be and is hereby granted. Thereupon, it is considered and

adjudged, that the plaintiff herein recover of the defendant herein the sum of Three Thousand Dollars ($3,000.00) with interest thereon from the 28th day of July, A. D. 1905, being the money payable by said defendant to said plaintiff by reason of the premises, together with his costs of suit to be taxed by the Clerk, and have execution thereof.

From the aforegoing the defendant in open Court by his attorneys notes an appeal to the Court of Appeals and prays that a bond to operate as a supersedeas be fixed, Whereupon said defendant is hereby required to furnish bond herein in the sum of Four Thousand Dollars to operate as a supersedeas on such appeal, with surety or sureties to be approved by this Court.

Memorandum.

April 24, 1906.—Appeal bond filed.

10 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 9, inclusive, to be a true and correct transcript of the record, as per Rule 5 of the Court of Appeals of the District of Columbia, in cause No. 48301 At Law, wherein Edmund Brady, is Plaintiff, and Simon D. Bronson, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington in said District, this 11" day of May, A. D., 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1681. Simon D. Bronson, appellant, *vs.* Edmund Brady. Court of Appeals, District of Columbia. Filed Jun. 11, 1906. Henry W. Hodges, clerk.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1906.

No. 1681.

SIMON D. BRONSON, APPELLANT,

vs.

EDMUND BRADY, APPELLEE.

APPELLANT'S BRIEF.

ALEXANDER H. BELL,
E. H. THOMAS,
Solicitors for Appellant.

DAVID N. HOUSTON,
Of Counsel.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1906.

No. 1681.

SIMON D. BRONSON, APPELLANT,

vs.

EDMUND BRADY, APPELLEE.

APPELLANT'S BRIEF.

Statement of the Case.

This is an action at law brought by the appellee, plaintiff below, against the defendant, upon a promissory note. The declaration is in two counts, and in the first states: (1) That the defendant, Simon D. Bronson, made the note; (2) The payee, Mrs. Winifred Bronson, endorsed and assigned it to the plaintiff, Edmund Brady; (3) That said note was duly presented for payment, dishonored, and the plaintiff is the present holder of said note (folios 1 and 2). The second count contains the common counts (folio 2). The particulars of demand contain a description of the note and the assignment thereof (folio 2). The plaintiff filed with his said declaration an affidavit of claim under Rule 73 of the court below (folios 2 and 3), and the defendant responded with two pleas (folio 3) and an affidavit of defense under the same rule (folio 4). The affidavit of defense sets up the fact that Mrs. Winifred Bronson, the payee, is the wife of the maker of said note; that the plaintiff did not acquire said note until after the maturity thereof; that

the plaintiff did not receive the said note for value, but is acting merely as the agent of the payee. Whereupon the plaintiff moved for judgment under the 73d Rule of the court for want of a sufficient affidavit of defense, and, on consideration, said motion was granted (folio 5) and judgment was entered for the amount of the said note and interest from the date thereof, whereupon the defendant below noted an appeal to the Court of Appeals.

Assignment of Errors.

The court erred in holding the affidavit of defense to be insufficient in point of law and granting the motion for judgment.

ARGUMENT.

1. Statements of fact upon information and belief with expectation to show at the trial, in an affidavit of defense, are sufficient.

Endlich on Affidavits of Defense, page 290, section 342; page 321, section 390.
Long *vs.* Long, 60 Atl. Rep., 759.
Magruder *vs.* Schley, 17 App. D. C., 230.

2. The plea of coverture may be given under the general issue.

Chitty on Pleading, vol. 1, pages 476 and 477.
Gould's Pleading, page 306, sections 47 and 51.

3. The transferee of negotiable paper to whom it is transferred after maturity acquires nothing but the actual right and title of the transferer.

Daniels on Negotiable Instruments, fifth edition, vol. 1, section 724*a;* fifth edition, vol. 1, section 725*a*.
Herrick and Burnside *vs.* Swomley, 56 Md., 465.

4. Contracts between husband and wife were void *ab initio* at common law.

4 Am. and Eng. Ency., 2d edition, page. 173.
15 Am. and Eng. Ency., 2d edition, page 854.
Sweat *vs.* Hall, 8 Vt., 107.
Bank of Rahway *vs.* Brewster, 49 N. J. L., 231.
Ellsworth *vs.* Hopkins, 58 Vt., 705.
Ingham *vs.* White, 4 Allen, 412.
Roby *vs.* Phelon, 118 Mass., 541.

5. Such contracts are now void, unless express statutory power is given the wife to contract with the husband and vice versa.

Randolph on Com. Paper, vol. 1, page 528.
Hendricks *vs.* Isaacs, 117 N. Y., page 411.
McCorkle *vs.* Goldsmith, 60 Mo. App., 475.
Francis *vs.* Norwood, 25 App. D. C., 463.

6. A maker of a note given by husband to wife or vice versa may defeat a recovery against him or her in an action brought by the endorsee or payer on the ground that the note was given to the spouse of the maker and therefore a nullity.

Am. and Eng. Ency, 2d edition, vol. 4, page 173.

For the error assigned and the reasons urged, it is respectfully submitted that the judgment appealed from should be reversed and the case remanded with such instruction in the premises as the court deems necessary.

ALEXANDER H. BELL,
E. H. THOMAS,
Solicitors for Appellant.

DAVID N. HOUSTON,
Of Counsel.

Court of Appeals, District of Columbia.

OCTOBER TERM, 1906.

No. 1681.

SIMON D. BRONSON, APPELLANT,

vs.

EDMUND BRADY.

BRIEF ON BEHALF OF APPELLEE.

I.

Statement of the Case.

On February 2, 1906, Edmund Brady, the appellee, began suit in the Supreme Court of the District of Columbia to recover from Simon D. Bronson, the appellant, the sum of $3,000, with interest at 4 per cent. per annum until paid, from the 28th day of July, 1905, according to the terms of the said Bronson's promissory note, a copy of which appears at page 2 of the printed record. The declaration was in two counts, and attached to it was an affidavit of the plaintiff in accordance with the 73d rule of the Supreme Court of the District of Columbia, in which he sets forth that he was the owner and holder of the note sued upon, which note was to the order of one Winfred Bronson, who endorsed the same to the plaintiff. To this declaration the defendant filed his

pleas of the general issue, and attached to these pleas an affidavit of defense, in which the only substantial objection made to the plaintiff's right of recovery was that the payee of the note was the wife of the maker, and therefore that the obligation was void at law in the hands of the wife, who could transfer no greater rights to the assignee and endorsee of the note than she herself possessed, and that is the sole question presented by the present appeal.

II.

ARGUMENT.

In the brief filed on behalf of the appellant, there are advanced certain propositions of law, with most of which the appellee agrees. It is conceded that in an affidavit of defense a statement upon information and belief, with an expectation to show certain facts at the trial of the case, is sufficient. It is also admitted that the defense of coverture may be made under the general issue. It is also admitted that the transferee of negotiable paper acquires nothing more than the right and title of the transferrer at the time of the transfer. It is freely conceded that at the common law contracts between husband and wife were not enforceable in the ordinary common-law courts.

We do not agree with the proposition that, even at the common law, contracts between husband and wife were absolutely void. If such contracts were void, they could not be enforced in any tribunal. We submit that it is more correct to say that contracts between husband and wife, founded upon a sufficient consideration, were valid and enforceable obligations, but that the forum in which they could be enforced was a court of equity, on account of the legal fiction that husband and wife were one person. At the common law all the personal property in possession of the wife became immediately the property of the husband. All her choses in action became his when he reduced them to pos-

session. He was entitled to all the rents and issues of her real estate, so that practically at the common law the wife was absolutely without property, and therefore she could not be sued at all, and virtually could not bring suit, because she had no property rights which she could enforce, and if entitled to sue at all she must have sued jointly with her husband.

If in the present case Mrs. Bronson, in the absence of any enabling statutes, had undertaken to sue her husband, it might be conceded that the suit could not be maintained. In this case, however, there is no pretense that the note in controversy was not founded upon a valuable consideration. In the absence of proof to the contrary, the presumption is that every negotiable instrument is based upon a valuable consideration. The affidavit of defense sets up no fact to show that the note was given without consideration. It must, therefore, be conceded that upon the present record the note sued upon was a valid obligation in the hands of Mrs. Bronson, founded upon sufficient consideration, and was an obligation which she could enforce in some tribunal. It is not necessary in the present case for us to maintain the proposition that Mrs. Bronson could have sued in her own name in a common-law court, although we believe that the language of the Code is sufficiently broad to give her that right. Our contention is that she had the right to dispose of this note as effectually as she could have disposed of a chattel or any other kind of personal property. The provisions of the Code upon this subject, which we quote for convenience of reference, are as follows:

> "SECTION 1151. All property, real personal and mixed, belonging to a woman at the time of her marriage, and all such property which she may acquire or receive after her marriage *from any person whomsoever* by purchase, gift, grant, devise, bequest, descent, in the course of distribution, by her own skill, labor, personal exertions, or as proceeds of a judgment at law or a decree in equity, or in any other manner, shall be her own property as absolutely as if she were unmarried, and shall be protected from the debts of

> the husband, and shall not in any way be liable for the payment thereof: *Provided,* That no acquisition of property passing to the wife from the husband after coverture shall be valid if the same has been made or granted to her in prejudice of the rights of his subsisting creditors."

The Married Women's Act of 1869 provided as follows:

> "The right of a married woman to any property belonging to her at the time of marriage or acquired during marriage in any other way than by gift or conveyance from her husband shall be as absolute as if she were a *femme sole.*"

The words "in any other way than by gift or conveyance from her husband" are studiously omitted from the Code, which provides, as above stated, that all the property, real, personal, and mixed, belonging to a woman at the time of her marriage, and all such property which she may acquire or receive after her marriage, from any person whomsoever, shall be her property as absolutely as if she were unmarried. Manifestly the meaning of this language is that a married woman could acquire her separate estate from her husband as effectually as she could from anybody else. Even assuming that the note in suit was given to Mrs. Bronson by her husband, the title to it under the express language of the Code was as absolutely and as completely vested in her as if she were a single woman. The Code can bear no other construction. Being her absolute property and as completely her property as if she were unmarried, why could she not dispose of it by assignment or endorsement? No sufficient reason to the contrary has been suggested, and we submit no such reason exists.

The technical theory that a husband could not contract with his wife or a wife with her husband is negatived in the very next section of the Code. Section 1152 provides as follows:

> "Whenever any interest or estate of any kind in any property, real, personal or mixed, situate, lying

or being within this District, has been or shall hereafter be sold, conveyed, assigned, mortgaged, leased, transferred, or delivered by any husband directly or indirectly to his wife, and has been, or shall hereafter be, subsequently sold, conveyed, assigned, mortgaged, leased, transferred or delivered by such wife and husband during their coverture, or hereafter by such wife solely, or by such wife after such coverture has terminated, or shall hereafter be devised or bequeathed by such wife during such coverture, or after such coverture has terminated, the fact of such previous sale, conveyance, assignment, mortgage, lease or delivery by such husband directly or indirectly to his wife shall not hereafter be deemed or taken at law or in equity to have given, preserved or reserved, nor to give, preserve or reserve to any subsisting creditor of such husband by reason of any debt or obligation, claim or demand whatsoever, any other or greater right, lien or cause of action against such interest or estate, or against any third person, his heirs, executors, administrators or assigns, than such creditors would have had in case such interest or estate had been sold, conveyed, assigned, mortgaged, leased, transferred or delivered, or devised, or bequeathed by such husband directly to such third person. And the fact of such previous sale, conveyance, assignment, mortgage, lease or delivery by such husband directly or indirectly to his wife, or the recital thereof in any instrument of writing whatever shall not hereafter be deemed or taken at law or in equity to give or impart, nor to have given or imparted notice to any third person, his heirs, executors, administrators or assigns, of the existence, or of the possibility, or probability of the existence of any subsisting creditor or creditors of such husband."

This section of the Code gives the husband the right to convey property, real or personal, directly to his wife—a thing which could not have been done at the common law, and which, if done, vested in the wife only an equitable title, enforceable only in a court of equity.

Section 1154 of the Code provides as follows:

> "Married women shall hold all their property, of every description, for their separate use as fully as if they were unmarried, and shall have power to dispose of the same by deed, mortgage, lease, will, gift, *or otherwise*, as fully as if they were unmarried."

Hamilton v Cathcart 175 U.S. 414

Conceding, as it must be conceded, that the delivery of the note in suit by Bronson to his wife was for a valuable and sufficient consideration, the note then was her separate estate and was a valid obligation. The section of the Code last quoted gives the wife the right to transfer this property as fully as if she were unmarried. It is difficult to conceive of language broader than that contained in this section of the Code. Owning this piece of commercial paper, it was a valuable asset in her hands. It was her separate estate, and if she could transfer or assign the same as fully as if she were a single woman, what possible objection can be urged to the title of the appellee to the note in suit?

The appellee has no fault to find with the fifth proposition advanced by the appellant, that contracts between husband and wife are void in the common-law courts, unless authority is given to the wife to contract with her husband; and, *vice versa*, and it may be conceded, for purposes of this case, that the wife in this case could not have brought suit at law herself by reason of her personal disability to sue her husband. That personal disability does not affect the validity of the obligation created by the execution and delivery of the note.

The case of Norwood *vs.* Frances, 25 App. D. C., 463, construed only the act of June 1, 1896. The transaction out of which that litigation arose occurred prior to the passage of the Code, and the Court of Appeals does not undertake in that case to construe the sections of the Code above referred to, which are very much broader and radically different from the prior Married Women's Act of June 1, 1896.

The only authority referred to in appellant's brief bearing upon any proposition now in dispute is the American and English Encyclopedia of Law, 2d edition, volume 4, at page 173. No adjudged cases are cited in the opposing brief.

The three Massachusetts cases referred to in the note to the text in the Encyclopedia do not apply to the present litigation, for the reason that the Married Women's Act of Massachusetts expressly forbids contracts and suits between husband and wife. The Illinois decisions are all opposed to the proposition advanced by the appellant.

In the case of Larison *vs.* Larison, 9 Ill. App., 27, it was held that the remedy for an injury to the property of a married woman by her husband, although formerly in equity, is now at law, and is not the proper subject for the interference of a court of equity, unless it is necessary to prevent irreparable injury. The Illinois statute on which this case was decided provides that "should either the husband or wife unlawfully obtain or retain the possession or control of property belonging to the other, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried."

In Patten *vs.* Patten, 75 Ill., 446, the court said, in construing the Married Women's Act:

> "At common law the being of the wife became by the marriage incorporated into and consolidated with that of the husband, who had the absolute right to all her personal property in possession, to her choses in action reduced to possession during his life, and to the rents, issues and profits of her real estate. This being the legal aspect of the relation, she, of course, could seek no remedy for deprivation of equitable rights, except in a court of equity; and no controversy could arise in that forum between husband and wife in respect to the separate estate of the latter, without involving more or less conflict between the legal rights of the husband and the equitable rights of the wife, the latter being without efficiency in so far as they controlled and held in subserviency the husband's legal rights. But where the wife has a separate estate, within the purview of the statute, the case is entirely different. *There,* as between her and her husband, she holds an absolute legal estate, if that would be the character of it in a *feme sole.* No question as to

> the subordination to the common-law rights of the husband can arise, for, backward as may be the courts, or the profession, to recognize the situation, those rights are by the statute swept away and gone. She is entitled to own, hold, possess and enjoy estates precisely as if she were sole and unmarried. As to such estate, and her relations thereto, she has no husband; he is a stranger, even during the coverture."

To the same effect is the case of Emerson *vs.* Clayton, 32 Ill., 493, and the case of Chestnut *vs.* Chestnut, 77 Ill., 347. In the case of McIver *vs.* Dennison, 18 U. C. Q. B., 619, it was held that the endorsee of a note made by her husband, payable to his wife and endorsed by her, might recover against the maker. The only other case referred to in the note in the Encyclopedia is the case of National Bank *vs.* Brewster, 49 N. J. Law, 231, which seems to support the appellant's contention. In all these cases, however, everything depends upon the particular language of the enabling statutes.

No broader language than is contained in the Code could possibly be framed, unless it were a provision distinctly stating that husband and wife might sue each other at law in regard to any matter affecting their property rights.

It is conceded on all hands that the suit in the present instance might have been maintained by the wife against her husband or by her endorsee against the husband in a court of equity. It would seem to be senseless to permit a married woman, or her endorsee in this case, to file suit in equity, in view of the unequivocal, broad language of the Code, providing that, with respect to her separate property, a married woman could deal, contract, or sue in precisely the same manner as if she were a single woman.

It is respectfully submitted that there is no merit in the position taken by the appellant, and that the judgment appealed from should be affirmed.

G. E. HAMILTON,
M. J. COLBERT,
J. J. HAMILTON,
For Appellee.